

GERALD P. DODSON (CA SBN 139602)
ERIKA L. LABIT (CA SBN 234919)
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, California 94304-1018
Telephone: 650.813.5600
Facsimile: 650.494.0792
E-mail: JDodson@mofo.com

Attorneys for Plaintiff
JUVENON, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JUVENON, INC., a California Corporation,
Plaintiff,
vs.
VITACOST.COM, INC., a Delaware Corporation,
Defendant.

Case No. C 04 4804 SI

**STIPULATED PROTECTIVE
ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Juvenon, Inc. ("Plaintiff") and Defendant Vitacost.com, Inc. ("Defendant") through their respective counsel, that the following Stipulated Protective Order may be entered by the Court to give effect to the stipulations set forth below:

1.0 Definitions.

1.1 "Designating Party" means the Plaintiff, Defendant or any non-party producing documents or information under this Stipulated Protective Order.

1.2 "Confidential" or "Highly Confidential" Information means information that a Designating Party believes to be of a proprietary business or technical nature and not

1 readily available to the public and/or other third parties and includes documents produced during
 2 discovery, answers to interrogatories and responses to requests for admissions, depositions,
 3 hearing or trial transcripts, and tangible things, the information contained therein and all copies,
 4 abstracts, excerpts, analyses or other writings that contain, reflect or disclose such information.

5 1.2.1 "Confidential" or "Highly Confidential" Information shall not
 6 include information that is in the public domain at the time of disclosure;
 7 information which after disclosure is published or becomes part of the public
 8 domain through no fault of a party receiving information under this Stipulated
 9 Protective Order, but only after it is published or comes into the public domain;
 10 information that is in the possession of a party receiving such information without
 11 any confidentiality obligations at the time of disclosure; or information disclosed
 12 by a third party having the legal right to do so.

13 1.3 "Document" shall have the meaning ascribed to it in Rule 34(a), Federal
 14 Rules of Civil Procedure.

15 1.4 "Employees" means full-time and part-time employees, and also temporary
 16 personnel, consultants, and/or contract employees who are providing secretarial, clerical, and/or
 17 administrative services only.

18 2.0 Designation of "Confidential" and "Highly Confidential" Information

19 2.1 Each Designating Party who produces or discloses any material that the
 20 Designating Party reasonably believes to comprise "Confidential" or "Highly Confidential"
 21 Information may designate the material as "Confidential" or "Highly Confidential" only if, prior
 22 to production, the document is clearly marked with a legend which states:

23 CONFIDENTIAL
 24 or
 25 HIGHLY CONFIDENTIAL.
 26
 27
 28

1 2.2 An answer to an Interrogatory may be designated as "Confidential" or
2 "Highly Confidential" Information by a statement made therein denoting the answer or a portion
3 thereof "Confidential" or "Highly Confidential."

4 2.3 A deposition transcript or a portion thereof may be designated as
5 "Confidential" or "Highly Confidential" Information by so designating on the record at the
6 deposition.

7 3.0 Disclosure of "Confidential" or "Highly Confidential" Information

8 3.1 "Confidential" Information may only be disclosed to the following persons:

9 3.1.1 counsel of record (*i.e.*, counsel identified on the complaint, the
10 answer and other pleadings filed with the Court) for the Plaintiff or Defendant in
11 this Action and their legal staff assisting in this litigation and whose duties require
12 access to "Confidential" Information;

13 3.1.1.1 The parties recognize that counsel for Vitacost, Mr. Ira
14 Kerker, is Vitacost's in house General Counsel. In view of this, Vitacost
15 agrees that prior to disclosure of any of Juvenon's "Confidential"
16 Information to any other Vitacost Employee, Vitacost will first identify to
17 Juvenon the person(s) to whom it intends to disclose such "Confidential"
18 Information accompanied by an executed copy (or copies) of Exhibit A.

19 3.1.1.2 Notwithstanding the provisions of Section 3.1.1.1, Mr.
20 Kerker may show any of Juvenon's "Confidential" information to his legal
21 staff assisting in this litigation whose duties require access to
22 "Confidential" information without prior notification to Juvenon, even
23 though such individuals are employees of Vitacost. Mr. Kerker's legal staff
24 includes by way of example, secretaries, paralegals, attorneys and clerks,
25 but does not include officers or directors of Vitacost.

1 3.1.2 independent experts and/or consultants retained by counsel of
2 record for the Plaintiff or Defendant, subject to the provisions of Section 4.0 of
3 this Stipulated Protective Order;

4 3.1.3 third parties specifically retained to assist counsel of record in
5 copying, or computer coding of documents, for purposes of copying or computer
6 coding "Confidential" Information;

7 3.1.4 Court reporters, their staffs, and Professional Vendors to whom
8 disclosure is reasonably necessary for this litigation;

9 3.1.5 the Court and the Court's staff.

10 3.2 Unless otherwise ordered by the Court or permitted in writing by the
11 Designating Party, "Highly Confidential" Information may only be disclosed by a Receiving
12 Party to counsel of record (*i.e.*, counsel identified on the complaint, the answer and other
13 pleadings filed with the Court) for the Plaintiff or Defendant in this Action and their legal staff
14 who are assisting in this litigation and whose duties require access to "Highly Confidential"
15 Information;

16 3.3 A Receiving Party may use "Highly Confidential" information or items
17 disclosed or produced by another Party or by a non-Party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Such "Highly Confidential"
19 information or items may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When a Final Disposition occurs, a Receiving Party must comply with
21 the provisions of section 11.0, below.

22 3.4 "Highly Confidential" information or items must be stored and maintained
23 by a Receiving Party at a location and in a secure manner that ensures that access is limited to the
24 persons authorized under this Order.

25 4.0 Not less than ten (10) calendar days prior to the initial disclosure of "Confidential"
26 or "Highly Confidential" Information to any person falling under the provisions of Sections 3.1.1,
27 3.1.1.1, 3.1.2, 3.1.3, 3.1.4, 3.1.5, 3.2, of this Stipulated Protective Order, the Party proposing to
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1 make such disclosure shall serve (by facsimile and mail) the name, address, present employer and
2 title, and a signed Declaration in the form of Exhibit A, of the proposed recipient on the
3 Designating Party (and to the opposing Party, if the Designating Party is other than the Plaintiff or
4 the Defendant).

5 4.1 Within the period before disclosure of the "Confidential" or "Highly
6 Confidential" Information to the proposed recipient, the Party or non-Party whose "Confidential"
7 or "Highly Confidential" Information is concerned may serve (by facsimile and mail) a written
8 objection to such disclosure. Such an objection shall stay disclosure to the proposed recipient.
9 Failure to serve a written notice of objection within ten (10) calendar days shall be deemed
10 approval of a proposed recipient.

11 4.2 If a written objection is served pursuant to Section 4.1, and the objection is
12 not resolved by meeting and conferring and reaching an agreement, the "Confidential" or "Highly
13 Confidential" Information may not be disclosed to the proposed recipient without a Court Order.

14 5.0 Any written material constituting or disclosing "Confidential" or "Highly
15 Confidential" Information that is filed with the Clerk of the Court, including Court papers, shall
16 be stamped "Confidential" or "Highly Confidential" and shall be filed in a sealed envelope or
17 other appropriate sealed container on which shall be endorsed the title of this Action, an
18 indication of the nature of its contents, the identity of the Party filing the material, the word
19 "CONFIDENTIAL", and a statement substantially in the following form:

20 CONFIDENTIAL
21 SUBJECT TO PROTECTIVE ORDER
22 IN CASE NO. C 04 4804 SI
23 UNITED STATES DISTRICT COURT FOR THE
24 NORTHERN DISTRICT OF CALIFORNIA

25 The statement shall be endorsed on the front page of the written material itself.

26 6.0 Notwithstanding the provisions of Sections 2.0 - 2.3 of this Stipulated Protective
27 Order, a Designating Party that inadvertently fails to mark information as "Confidential" or
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1 "Highly Confidential" at the time of production shall have ten (10) business days thereafter in
2 which to correct such failure.

3 7.0 Counsel attending a deposition who inadvertently fails to designate any portion of
4 the transcript as "Confidential" or "Highly Confidential" on the record at the deposition shall
5 have ten (10) business days following the mailing of the transcript by the court reporter to correct
6 such failure. Such correction and notice thereof shall be made in writing to the reporter, with
7 copies to all other counsel, designating the portions of the transcript that contain confidential
8 information, and directing the reporter to mark that portion of the transcript accordingly.

9 8.0 No person shall disclose to anyone not specified in Section 3.0 of this Stipulated
10 Protective Order any information designated as "Confidential" or "Highly Confidential"
11 Information without prior written consent of the Designating Party or further Order of this Court.

12 9.0 This Stipulated Protective Order is intended to provide a mechanism for the
13 handling of "Confidential" or "Highly Confidential" Information, the disclosure or production of
14 which is objected to only on the basis that the "Confidential" or "Highly Confidential"
15 Information is confidential, proprietary or a trade secret. Each Party reserves the right to object to
16 any disclosure of information or production of any documents it deems "Confidential" or "Highly
17 Confidential" Information on any other ground it may deem appropriate. The designation of
18 "Confidential" or "Highly Confidential" Information pursuant to this Stipulated Protective Order
19 shall not create any presumption with respect to the confidential, proprietary, or trade secret
20 nature of any information, documents or things.

21 10.0 Pretrial and Trial.

22 10.1 This Stipulated Protective Order is intended to regulate the handling of
23 "Confidential" or "Highly Confidential" Information during the pretrial period of this litigation,
24 but shall remain in force and effect thereafter until modified, superseded or terminated on the
25 record by agreement of the parties hereto or by order of this Court.

1 10.2 Subject to the Federal Rules of Evidence or Order of the Court,
2 "Confidential" or "Highly Confidential" Information may be offered in evidence at trial or at any
3 Court hearing in this Action, provided that:

4 10.2.1 the proponent of the evidence advises the Court and the
5 Designating Party that "Confidential" or "Highly Confidential" Information will
6 be offered prior to its offer;

7 10.2.2 the evidence be received in camera or under other conditions to
8 prevent disclosure to any persons other than the judge, the jury, the court reporter,
9 counsel of record, any witness testifying with respect to the evidence, and other
10 persons who are entitled to receive the appropriate category of "Confidential" or
11 "Highly Confidential" Information under the terms of this Stipulated Protective
12 Order.

13 11.0 Upon final termination of this action with respect to any Party, that Party shall, at
14 the option of the Designating Party, either return to the Designating Party or destroy all
15 "Confidential" or "Highly Confidential" Information in its possession except such pretrial and
16 trial records as are regularly maintained by outside counsel in the ordinary course of business,
17 which records must be confidential in conformity with this Stipulated Protective Order.

18 12.0 If "Confidential" or "Highly Confidential" Information is disclosed to any person
19 other than in the manner authorized by this Stipulated Protective Order, the Party responsible for
20 the disclosure must immediately inform the Designating Party of all pertinent facts relating to
21 such disclosure and shall make every effort to prevent disclosure by each unauthorized person
22 who received such information.

1 13.0 Nothing in this Stipulated Protective Order shall limit or restrict the manner in
2 which the Plaintiff or Defendant shall handle their own "Confidential" or "Highly Confidential"
3 Information.

4 Date: June 23, 2005

By: Gerald P. Dodson
Gerald P. Dodson

MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, California 94304-1018
Telephone: (650) 813-5600

Attorney for Plaintiff
JUVENON, INC.

10 Date: June 24, 2005

By: Ira Kerker
Ira Kerker

VITACOST.COM, INC.
2055 High Ridge Road
Boynton Beach, Florida 33426

Attorney for Defendant
VITACOST.COM, INC.

16 IT IS SO ORDERED:

17 Date: 7/5/05
18
19
20
21

as amended

Susan D. Helton
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JUVENON, INC., a California Corporation,
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1. My name is _____.

2. I reside at _____.

3. I am presently employed as (position) _____.

by (state name and address of employer) _____.

4. I have read the Stipulated Protective Order that has been entered in this case, and a copy of it has been given to me. I understand the provisions of the Stipulated Protective Order, and agree to comply with and to be bound by the provisions of the Stipulated Protective Order.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ day of _____, at _____.